NO. 20360

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

GLADYS TOWLES ROOT and
GEORGE A. FORDE,

Appellees.

APPELLANT'S OPENING BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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I

STATEMENT OF THE PLEADINGS AND FACTS DISCLOSING JURISDICTION

A. On December 9, 1964, the Federal Grand Jury for the Southern District of California, Central Division, returned a 5-count indictment against the two appellees in Case No. 34352 [C. T. 54]. 1/ Count One charges a conspiracy to suborn perjury, to commit perjury and to obstruct justice in violation of 18 United States Code, §371 in the underlying case, No.33087-CD [C. T. 56-57]. 2/

1/ C. T. signifies Clerk's Transcript of Record.

2/ Amsler, Irwin, and Barry Worthington Keenan, the third defendant in Case No. 33087-CD were named as unindicted co-conspirators [C. T. 56].

Counts Two and Three charge subornation of perjury as to witness-defendants Joseph Clyde Amsler and John William Irwin, respectively, in case No. 33087-CD in violation of 18 United States Code, §1622 [C. T. 61, 131]. Counts Four and Five charge obstruction of justice in the corrupt endeavor to influence and impede the witness defendants Amsler and Irwin, respectively, by having them testify falsely as to certain specified subjects in violation of 18 United States Code, §1503 [C. T. 199, 201].

B. On January 12, 1965, appellee Forde moved to Dismiss the Indictment on the ground that the indictment does not state facts sufficient to constitute a public offense [C. T. 202-214]. On the same date, appellee Root filed a Motion to Quash the Indictment [C. T. 215-216] on the grounds inter alia that the indictment fails to state an offense against the laws of the United States and that the Court was without jurisdiction of the offense charged [C. T. 217-231]. On January 21, 1965, appellant, United States of America, filed its opposition to defendants' motions [C. T. 232-242]. A Supplemental Motion to Dismiss the Indictment on behalf of appellee Root was filed on January 18, 1965 [C. T. 244-248] with Supplemental Points and Authorities thereafter filed on her behalf on January 29, 1965 [C. T. 251-268] and on February 18, 1965 [C. T. 277-285]. On February 25, 1965, appellant filed its Supplemental Opposition to defendants' Motions to Dismiss [C. T. 269-275].

C. Hearing was had on the Motions to Dismiss on February 1, 1965 [C. T. 289] [R. T. 3/ Vol. III, pp. 6-44] and

3/ R. T. signifies Reporter's Transcript of Proceedings comprised of Volumes II and III.

February 15, 1965 [C. T. 290] [R. T. Vol. III, pp. 47-93]. The judgment and order of the District Court dismissing the indictment was entered on June 30, 1965 [C. T. 286-288].

D. On July 28, 1965, the Government filed a Notice of Appeal from the Order of the District Court dismissing the Indictment [C. T. 291-292].

E. The jurisdiction of the United States District Court for the Southern District of California, Central Division, was based upon Section 3231 of Title 18, United States Code. Jurisdiction of the United States Court of Appeals for the Ninth Circuit is based upon Sections 1291 and 1294 of Title 28, United States Code and Section 3731 of Title 18, United States Code.

II

STATUTES AND RULE INVOLVED

The pertinent statutes and rule of the Federal Rules of Criminal Procedure, provide in part:

18 U.S.C. §371

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years,

or both. . . ."

18 U.S.C. §1621:

"Whoever having taken an oath before a competent tribunal . . . willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury. . . ."

18 U.S.C. §1622:

"Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both."

18 U.S.C. §1503:

"Whoever corruptly . . . endeavors to influence, intimidate, or impede any witness, in any court of the United States . . . in the discharge of his duty . . . shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Rule 7(c)(d), Federal Rules of Criminal Procedure:

"(c) Nature and Contents. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. . . . It need not contain . . . any other matter not necessary to such statement. . . ."

"(d) Surplusage. The court on motion of the defendant may strike surplusage from the indictment or information."

III

QUESTION PRESENTED

The following question is presented by this appeal: Did the District Court err in its determination that the indictment returned against appellees on December 9, 1964 does not state an offense against the United States, and in granting the motions of appellees to dismiss the indictment?

IV

STATEMENT OF THE CASE

In order to provide the setting essential to a determination of this appeal, some recital of the history of this case is necessary.

The indictment at issue in this case stems from the trial and conviction in March, 1964, of three defendants who were charged with the interstate transportation of kidnap victim, Frank Sinatra, Jr. [C. T. 55, 286]. The underlying case, United States of America v. Barry Worthington Keenan, Joseph Clyde Amsler and John William Irwin, No. 33087-CD, Southern District of California, Central Division [4/] is herein sometimes referred to as the Sinatra kidnapping case. Appellee Forde was one of the attorneys for defendant Amsler and appellee Root represented defendant Irwin

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4/ Each defendant appealed his conviction to this court (No. 19509). Keenan has since dismissed his appeal and the appeals of Amsler and Irwin are sub judice.

[C. T. 56]. A basic defense put forward at the trial in the testimony of Amsler and Irwin was that the kidnapping was actually a publicity stunt which the victim knew about before it occurred; that as part of this hoax the defendants agreed to allow themselves to be apprehended and further agreed that, once apprehended, they would cooperate with the police enforcement officials and act as if they had really kidnapped Frank Sinatra, Jr. [C. T. 64-70, 125-126, 142-144, 161-164, 210].

In July, 1964, a three-count indictment was returned against appellees charging that they corruptly endeavored to influence Amsler and Irwin to give the allegedly false testimony noted above in violation of the obstruction of justice statute, 18 U.S.C. §1503 (counts 2 and 3) and with conspiracy, in connection with such testimony, to violate 18 U.S.C. §§371, 1503, and the perjury statute, 18 U.S.C. §621 (count one) [C. T. 2-7] 5/. The court below dismissed this indictment on the ground that it failed to state an offense essentially for lack of specificity 6/ [C. T. 53; R. T.

5/ A copy of this indictment, hereafter sometimes referred to as the first indictment, is attached hereto as appellant's Appendix A.

6/ Appellees' principal argument for dismissal of the first indictment was that it lacked sufficient specificity [R. T. Vol. II, pp. 10, 12; C.T. 31]. The Court below, in holding that Counts 2 and 3 (obstruction of justice counts) did not state an offense, in part, stated: " . . . and in my view neither Count 2 nor 3 do, and . . . they cannot unless they set forth the . . . false testimony in haec verba and allege that it was material and show wherein it was material to the charge that was then pending." [R. T. Vol. II, pp. 73-74].

Vol. II, pp. 69, 75, 102].

The matter was thereafter presented to another Federal Grand Jury, and in December, 1964, in the United States District Court for the Southern District of California, Central Division, the present five-count indictment was returned against appellees dealing with the same general subject matter [C.T. 54]. In summary it charges a conspiracy to suborn perjury, commit perjury and obstruct justice, 18 U.S.C. §§ 371, 1503, 1621, 1622 (Count one) [C. T. 55-59], suborning the perjury of Amsler and Irwin, 18 U.S.C. §1622 (Counts two and three) [C. T. 61, 131], obstructing justice by corruptly endeavoring to influence, intimidate and impede Amsler and Irwin by having them testify falsely, 18 U.S.C. §1503 (Counts four and five) [C. T. 199, 201].

The charging clause of the conspiracy count, Count one, after alleging facts as to the underlying Sinatra kidnapping case in the language of the statute [C. T. 55-57], alleges that the "primary object of said conspiracy was to obtain an acquittal by improper and unlawful means for the unindicted co-conspirators Barry W. Keenan, Joseph Clyde Amsler and John William Irwin. . ." [C. T. 57]; that " . . . it was part of said conspiracy that ... Amsler and ... Irwin would take the witness stand and testify in their own behalf . . ." and that they " . . . would be instructed to testify falsely and would testify falsely" as to six "material subjects", i. e., that Frank Sinatra, Jr. knew beforehand that he was to be kidnapped; that the kidnapping was planned by people "higher up" than Barry W. Keenan; that the kidnapping was a publicity stunt and a hoax; that

there was a person named "Wes" or "West" who was involved in planning the kidnapping; that they were to be caught by law enforcement personnel; and that, once they were caught, they would conduct themselves as if they had really kidnapped Frank Sinatra, Jr. and not reveal that it was a hoax and publicity stunt 7/ [C. T. 57].

These subjects of false testimony are repeated in the obstruction of justice counts (Counts four and five) which allege that appellees "wilfully and knowingly, did corruptly endeavor to influence, intimidate and impede" Amsler and Irwin by having each " . . . testify falsely and contrary to his oath as a witness on said six 'material subjects' " [C. T. 199, 201].

The subornation of perjury counts (Counts two and three) make the same allegations but further detail in haec verba the actual testimony given by Amsler and Irwin on these subjects and detail the specific aspects as to which such testimony was false. As to Amsler, there were twelve specifications of perjury [C. T. 61-129. See also Appendix B]. As to Irwin, there were twenty-one such specifications [C. T. 131-197. See also Appendix C].

7/ [There were no such specific allegations in the first indictment (See Appendix A).] The second indictment also alleges that it was "part of said conspiracy that they would convey and publish the false information that the charged crimes were arranged as a publicity stunt and hoax by and on behalf of Frank Sinatra, Jr." [C. T. 57-58].

Appellees moved to dismiss this indictment on grounds reminiscent of their attack on the first indictment [C. T. 204, 207, 211-213]. 8/

The Court below, in dismissing this indictment, on the ground that it, as with the first indictment, failed to charge an offense, stated that it could not " . . . Conscientiously come to a judgment that the defendants are sufficiently informed . . . of the charges against them, so as to be able to know what they must meet to defend themselves, or, in case any other proceedings are taken against them, arising out of or related to their representation of the defendants . . . they could plead a former acquittal or conviction . . ." [C. T. 287-288]. 9/

V

SPECIFICATION OF ERROR

The court below erred:

(1) In ruling that the indictment and each of the five counts therein was insufficient in failing to state an offense; and

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8/ By stipulation each appellee adopted the motions brought by the other [R. T. Vol. III, pp. 6-7].

9/ As we read its opinion, the District Court dismissed the present indictment solely on the ground of insufficiency inasmuch as it rejected the other challenges made by appellees, i. e., that the indictment violated their Fifth Amendment Rights; that the District Court lacked jurisdiction; that incompetent and insufficient evidence was submitted to the Grand Jury; and that the Grand Jury was biased and prejudiced [C. T. 288, 215]. Accordingly, we do not deal with these other issues herein.

(2) In dismissing the indictment returned on December 9, 1964 [C. T. 288].

VI

SUMMARY OF ARGUMENT

The indictment returned on December 9, 1964, was sufficient. Each count fully informs the accused of the nature of the crime charged, as required by the Sixth Amendment and clearly states the "essential facts constituting the offenses charged" as required by Rule 7(c) of the Federal Rules of Criminal Procedure.

As to Count one (the conspiracy count) and Counts four and five (the obstruction of justice counts), the District Court adopted the argument of appellees that the indictment fails to state what the false testimony was or would be, despite the fact that in six subject areas, the matters alleged are highly specific and the indictment alleges that the witnesses Amsler and Irwin "would be instructed to testify falsely, and would testify falsely" as to those "material subjects". The particular areas of false testimony charged are thus specifically set forth.

As to Counts two and three (the subornation of perjury counts), where the specific false testimony as to each of the matters is set forth in haec verba, the basis of dismissal is indicated merely by the references by the Court below to their length and the number of questions and answers as set forth. These two counts not only set forth the actual testimony alleged to be false, but

allege, as to each specification, the particular respects in which it was false.

Appellees argued below that the indictment is defective because, while it alleges that the appellees and the witnesses (i. e. appellees' clients at the trial) knew that the testimony of the witnesses was false, it does not allege that the appellees knew that the witnesses knew the testimony was false. The present indictment, however, does in fact allege that appellees "knowingly procured, induced, instigated, and suborned" the witnesses to "knowingly commit perjury". Similar words have been held sufficient.

As to appellees' argument that materiality is alleged only generally, the rule in the Federal Courts is that materiality may be so alleged. This indictment alleges that the testimony was material to the issues of guilt or innocence as framed by the indictment and pleas of not guilty entered by the defendants in the Sinatra kidnapping case and the nature of the materiality is self-evident from the nature of the testimony pleaded.

As to appellees' contention below that the indictment is not a plain, concise statement within the meaning of Rule 7(c), Federal Rules of Criminal Procedure, this assertion is obviously inappropriate as to Counts one, four and five. As to Counts two and three, the detailed allegations relate to some thirty-one specifications of perjury. Allegations of additional testimony provide the background and setting for the respective areas of perjury. At most, assuming arguendo, any of such allegations are found to be unnecessary to the indictment, they may be treated as surplusage.

VII

ARGUMENT

A. THE INDICTMENT IS SUFFICIENTLY PLEADED.

Generally speaking, an indictment must inform the defendant "of the nature and cause of the accusation" pursuant to the Sixth Amendment to the Constitution and must state "The essential facts constituting the offense charged" as required by Rule 7(c) of the Federal Rules of Criminal Procedure. As the Supreme Court stated in Hagner v. United States, 285 U.S. 427 at 431 (1932):

> "The true test of the sufficiency of an indictment is * * * whether it contains the elements of the offense intended to be charged, 'and sufficiently apprises the defendant of what he must be prepared to meet, and, *** whether the record shows with accuracy to what extent he may plead a former acquittal or conviction'." United States v. Debrow, 346 U.S. 374, 377-378 (1953); Russell v. United States, 369 U.S. 749, 763-764 (1962).

Rule 7(c) of the Federal Rules of Criminal Procedure provides that "The indictment * * * shall be a plain, concise and definite written statement of the essential facts constituting the offense charged", and that it "need not contain * * * any other

matter not necessary to such statement".

While on the threshold of dealing separately with each of the five counts and the attacks in the court below on the indictment, several general observations need to be made. As a matter of pleading, each count stands or falls on the strength of its own allegations and must be considered alone. United States v. Hughes Tool Co., 78 F. Supp. 409, 411 (D. C. Hawaii 1948); United States v. Apex Distributing Co., 148 F. Supp. 365, 373 (D. C. R. I. 1957). Although the court below and counsel for appellee Root paid lip service to this principle [R. T. Vol. III, pp. 40, 65], this is what they failed to do [C. T. 287; R. T. Vol. III, pp. 83, 84].

As to the first indictment, it must be remembered that the appellees persuaded the Court below that it should be dismissed for lack of specificity [R. T. Vol. II, pp. 69, 70, 73-75, 102]. The present indictment is attacked for having pleaded too much [R. T. Vol. III, pp. 32, 33, 52, 53; C. T. 277, 278]. The sufficiency of an indictment must be determined on the basis of practical rather than technical considerations. Medrano v. United States, 285 F. 2d 23, 26 (9th Cir. 1960), cert. den. 336 U. S. 968 (1961); rehearing den. 368 U. S. 872 (1961).

We now turn to a detailed consideration of each of the five counts.

B. COUNT ONE IS SUFFICIENT TO CHARGE A CONSPIRACY.

This indictment clearly alleges the elements of a conspiracy. The essence of the crime of conspiracy is an agreement to commit an offense against the United States plus at least one overt act of one or more of the conspirators to effect the object of the conspiracy. United States v. Falcone, 311 U.S. 205, 210 (1940); Blumenthal v. United States, 158 F.2d 883, 888-889 (9th Cir. 1946), aff'd 332 U.S. 539 (1947).

Count One charges that "beginning on or about December 14, 1963 and continuing to on or about March 7, 1964, defendant Gladys Towles Root, defendant George A. Forde, and unindicted co-conspirators Barry W. Keenan, Joseph Clyde Amsler and John William Irwin agreed, confederated and conspired together to defraud the United States and to commit offenses against the United States, to wit:

a. To corruptly endeavor to influence, intimidate, and impede witnesses in the discharge of their duties as witnesses in the United States District Court for the Southern District of California in Case 33087-CD, in violation of 18 U.S.C. §1503;

b. To suborn perjury in the United States District Court for the Southern District of California in Case 33087-CD, in violation of 18 U.S.C. §1622;

c. To commit perjury in the United States District Court for the Southern District of California in Case 33087-CD, in

violation of 18 U.S.C. §1621;

d. To corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for the Southern District of California in Case 33087-CD, in violation of 18 U.S.C. §1503"[C.T. 56, 57].

In addition to setting forth the gist of the offense of conspiracy and the agreement to commit the unlawful acts, it is alleged that "the primary object of said conspiracy was to obtain an acquittal by improper and unlawful means" for the unindicted co-conspirators Keenan, Amsler and Irwin in case No. 33087-CD; that "It was part of said conspiracy that unindicted co-conspirators" Amsler and Irwin "would take the witness stand and testify in their own behalf"; that "It was part of said conspiracy" that unindicted co-conspirators Amsler and Irwin "would be instructed to testify falsely, and would testify falsely * * *"; and that "it was further part of said conspiracy that they would convey and publish the false information that the charged crimes were arranged as a publicity stunt and hoax by and on behalf of Frank Sinatra, Jr." [C.T. 57, 58].

It is further alleged that the appellees and the unindicted co-conspirators"committed numerous overt acts in furtherance of said conspiracy and to effect the objects thereof . . ." there being pleaded in Count One some eighteen such overt acts [C.T. 58, 59].

Assuming, arguendo, that nothing further had been pleaded

in this conspiracy count, appellant submits that, under settled rules of conspiracy pleading, Count One would have been legally sufficient. The simplified form of an indictment necessarily requires use of general terms to express ultimate facts. This was permissible even before the adoption of Federal Rules of Criminal Procedure and even under the old English law. Brown v. United States, 143 Fed. 60, 65 (8th Cir. 1906), cert. den. 202 U.S. 620 (1906).

By its terms, Rule 7(c) Federal Rules of Criminal Procedure, requires pleading of only the substance of the offense. Generally, indictments framed merely in the language of the statute which charge the offense have been sustained. Smiley v. United States, 181 F.2d 505, 508 (9th Cir. 1950), cert. den. 340 U.S. 817, 818; Wong Tai v. United States, 273 U.S. 77-81 (1927); United States v. Chunn, 347 F.2d 717, 719 (4th Cir. 1965); cf. Russell v. United States, 369 U.S. 749 (1962). Since the adoption of the Federal Rules of Criminal Procedure, technical objections to indictments are not valid where the elements of the offense are clearly set forth. Stapleton v. United States, 260 F.2d 415 (9th Cir. 1958).

The main attack on Count one is that it fails to state what the alleged false testimony was or would be [C. T. 207].

The court below in adopting appellees' contention made the following observation:

> "While the indictment is thus cast in five counts, it is apparent that the gravamen of the offenses charged is that the defendants induced

Amsler and Irwin to testify falsely * * * which false testimony may or may not be found scattered somewhere among the 745 questions and answers * * * contained in Counts Two and Three or somewhere else * * *." [C. T. 287].

The error in this reasoning is apparent were we to assume, arguendo, that Amsler and Irwin had never taken the stand and never given false testimony. Yet if appellees Forde and Root had previously agreed to suborn either Amsler or Irwin to commit perjury and a single overt act were performed in furtherance of the agreement, would not a conspiracy offense lie? United States v. Rabinovich, 238 U.S. 70, 82 (1915); American Tobacco Co. v. United States, 328 U.S. 781, 789 (1946). By what omniscience is Government counsel, in drawing a conspiracy indictment in the assumed case, expected to allege what the exact perjured testimony would have been?[C.T. 239, 270]

It is submitted that the Court below erred in dismissing Count one of the present conspiracy indictment which count fully satisfies the test of sufficiency announced in Hagner v. United States, 285 U.S. 427, 431, supra, p. 12; United States v. Debrow, 346 U.S. 374, 377-378, supra p. 12. See also Wong Tai v. United States, 273 U.S. 77, 81-82 (1927); Stein v. United States, 313 F.2d 518, 520 (9th Cir. 1962), cert. den. 373 U.S. 918 (1963). It charges appellees, with definiteness and reasonable particularity as to time and place, with conspiring with named persons [C. T.

56] to commit specified offenses [C. T. 56-57]. It further charges appellees in like manner with doing various specified acts to effect the object of the conspiracy [C. T. 57-59]. Moreover, appellees were defense attorneys in the Sinatra kidnapping case [C. T. 56]. They had access to all the files, records and daily copies of the Trial Transcript, and both were present in court when Judge East, the trial judge, referred the matter to the Federal Grand Jury [C. T. 15]. The indictment alleges the pendency of the six-count indictment in the Sinatra kidnapping case, identifies the defendants in that pending indictment, and gives the details of each of the six counts charged in the indictment in that case [C. T. 55]. It sets forth the procedural steps of arrest, arraignment, pretrial motions, pleas and jury trial, and the relationship of these appellees to those proceedings [C. T. 55-56]. As to the subornation of perjury and perjury aspects of Count one, it alleges with specificity that the instructions to testify falsely and the material subjects of false testimony would be:

"a. That Frank Sinatra, Jr. knew before hand that he was to be kidnapped;

"b. That the kidnapping of Frank Sinatra, Jr. was planned by people higher up than Barry W. Keenan;

"c. That the kidnapping of Frank Sinatra, Jr. was a publicity stunt and a hoax;

"d. That there was a person named 'Wes' or 'West' who was involved in planning the kidnapping

of Frank Sinatra, Jr.;

"e. That they were to be caught by law enforcement personnel;

"f. That once they were caught they would conduct themselves as if they had really kidnapped Frank Sinatra, Jr. and not reveal that it was a hoax and publicity stunt." [C. T. 57-58]

It seems inconceivable how this indictment, in this setting, can be deemed insufficient to apprise these appellees of the nature of the charges they would have to meet. Cf. Russell v. United States, 369 U.S. 749, 764, 789, supra., p. 12.

The allegations in this conspiracy count clearly satisfy the requirements of the cases principally relied on by these appellees in the Court below. United States v. Devine's Milk Laboratories, 179 F. Supp. 799 (D.C. Mass. 1960), involved a conspiracy indictment which was dismissed for lack of specificity in that it did not " . . . even indicate the transaction or even the general subject matter in connection with which any false statement or claims were to be made or presented" [Emphasis Supplied] [R. T. Vol. III, pp. 59-60]. See also United States v. Apex Distributing Co., 148 F. Supp. 365, 370, 372 (D.C. R.I. 1957). Russell v. United States, 369 U.S. 749, supra, involved the review of convictions obtained under 2 U.S.C. §192 (a statute punishing persons summoned as witnesses by Congress when such persons, having appeared, refused to answer any questions pertinent to the question under inquiry). In

each case the indictment failed to identify the subject under Congressional subcommittee inquiry at the time the witness was interrogated. The Court held that the determination of the issue of pertinency was of crucial importance and that the indictment must set out in detail the subject under investigation. Russell at pp. 766, 771. Aside from the fact that Russell, of course, did not involve a conspiracy or perjury situation [10], the requirement announced in Russell is clearly satisfied in that in the present indictment, the six subjects of perjury are clearly specified [C. T. 57-58].

Returning to our assumed case in which Irwin or Amsler had never in fact testified falsely, what more could have been pleaded to sustain this conspiracy count?

This conspiracy count, when compared to a similar count sustained in Williamson v. United States, 207 U.S. 425, 446, 449 (1907) is a fortiori sufficient. In Craig v. United States, 81 F.2d 816, 820 (9th Cir. 1936) a conspiracy pleading similar to the instant indictment was held sufficient. See also Stein v. United States and cases cited therein, 313 F.2d 518, 519-520 (9th Cir. 1962), cert. den. 373 U.S. 918 (1963).

Pettibone v. United States, 148 U.S. 197 (1893), was expressly relied on by the Court below in its dismissal of Count one [C. T. 288]. This reliance was misplaced. Pettibone involved

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10/ For other reasons which distinguish the majority opinion in Russell from the mainstream of conspiracy pleading cases, see Mr. Justice Harlan's dissent at pp. 783-794 and this Court's opinion in Turf Center Inc. v. United States, 325 F.2d 793 (9th Cir. 1963). See also Government counsel's observations in the instant case [R. T. Vol. II, 33-34, 99-100, R. T. Vol. III, p. 86].

a conspiracy to obstruct justice by inducing the violation of an injunction. Pettibone held that, where persons are indicted for obstructing justice by causing an injunction to be violated, the indictment must allege that the defendants knew of the injunction and the pending court proceedings. There could be no violation of the injunction before it was issued and, upon analogy to contempt, no person could be found guilty unless he knew or had reasonable cause to know that process had issued. See also United States v. Perlstein, 126 F. 2d 789, 793 (3rd Cir. 1942), cert. den. 316 U.S. 678 (1942). Can there be any doubt that the allegations which were the concern in Pettibone are clearly present in the present indictment?[C. T. 55-56, supra, p. 18]. Additionally, appellees Root and Forde had actual knowledge of the pendency of the Sinatra kidnapping case and related proceedings as attorneys who represented two of the defendants throughout the trial of that case [C. T. 286]. 11/

C. COUNTS TWO AND THREE OF THE INDICTMENT ARE SUFFICIENT TO CHARGE SUBORNATION OF PERJURY.

Counts two and three, which charge appellees with suborning Amsler and Irwin to commit perjury in violation of 18 U.S.C. §1622, clearly allege the elements of the crime.

Unlike the conspiracy count and the obstruction of justice counts, which would be sufficiently pleaded even if Amsler and

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11/ Appellees did not predicate any part of their attack below on the instant indictment on this problem raised in Pettibone.

Irwin had never taken the stand, the subornation of perjury counts could not state an offense unless perjury was, in fact, committed. Count Two charges:

> "Beginning on or about December 14, 1963, and continuing to on or about March 4, 1964, within the Central Division of the Southern District of California, defendants GLADYS TOWLES ROOT and GEORGE A. FORDE knowingly procured, induced, instigated and suborned Joseph Clyde Amsler to knowingly commit perjury in that, on March 2 and 3, 1964, said Joseph Clyde Amsler, having duly taken an oath before a competent tribunal, namely, the United States District Court, Southern District of California, in Case No. 33087-CD then pending before said Court, a case in which a law of the United States authorized an oath to be administered that he would testify truly, did willfully and contrary to said oath testify to material matters which he did not believe to be true, as follows: . . ." [C. T. 61].

Count two thereafter details twelve specifications of perjury. Within each specification, Amsler's testimony as to a certain subject area is grouped together, whether raised by direct examination or cross-examination, followed by a final paragraph which pleads with specificity and certainty precisely what testimony was false. Many of these specifications cover a very few lines of testimony, e.g. IV, VII, VIII, X, and XI [C. T. 92-93; 110-111;

112-113; 123-124; 125-126]. Those specifications which contain more testimony are setting the scene by way of telling time, place, persons present and background of an alleged particular event [C. T. 272. See for example, Specification XI, Count two. C. T. 125, lines 1-16; R. T. Vol. III, pp. 86-87].

Identical charging allegations are contained in Count three except that in Count three the subornee is Irwin and the dates on which he testified were March 4, and 5, 1964 [C. T. 131].

Count three, which charges appellees with suborning the witness Irwin to commit perjury, contains twenty-one such specifications of perjury [See Index to Specifications of perjury by Irwin referenced to the Clerk's Transcript and attached hereto as Appellant's Appendix C].

In each and every specification in both counts the final paragraph sets forth what testimony is false and in what respects [R. T. Vol. III, pp. 88-89] with a general allegation that "The above said testimony was material to the issues of guilt or innocence as framed by the indictment and the pleas of not guilty entered by all of the defendants' in the Sinatra kidnapping case [Appendices B and C. See, for example, Specification I, Count Two, C. T. 70-71].

Thus, on its face, the indictment states all the elements of the offense. As to the perjury aspect, the essential elements are present as set forth in 18 U. S. C. §1621 which defines the crime, supra. They are: (1) that an oath has been administered "before a competent tribunal . . .", (2) that false statements have been wilfully made; and (3) that the statements were material to the

matter under investigation. There can be no serious dispute that elements (1) and (2) are sufficiently alleged in the indictment. As to element (3), appellees contend that materiality cannot be generally alleged. The District Court apparently accepted their argument that as to each specification of perjury the indictment must plead the facts from which the conclusion of materiality was drawn [R. T. Vol. III, 33, 52; Vol. II, 73-74]. This is not the law. Markham v. United States, 160 U.S. 319 (1895); Travis v. United States, 123 F.2d 268 (10th Cir. 1941); Wooley v. United States, 97 F.2d 258 (9th Cir. 1938), cert. den. 305 U.S. 614. Materiality is clearly evident from the very nature of the testimony within the framework of the indictment and the pleas of not guilty in the Sinatra kidnapping case [C. T. 55-56; R. T. Vol. III, pp. 41, 84, 85]. Cf. United States v. Simplot, 192 F. Supp. 734, 736 (D. C. Utah 1961) relied on by appellees in the court below [C. T. 204]. The perjury indictment in Simplot pled only the subject matter of the alleged perjurious conversation without the words or substance. Thus, while rejecting the argument that materiality could not be generally alleged, the Court dismissed the indictment since there was nothing to which to tie the conclusion of falsity. In the present indictment, of course, Counts Two and Three set forth the nature of the testimony in haec verba. Simplot is thus inapposite as to Counts Two and Three and not in point as to the conspiracy and obstruction of justice counts.

As to the subornation aspect, appellees contended that the indictment does not charge that the appellees knew that the witness

knew that the testimony was false, relying on Evans v. United States, 19 Fed. 912 (D. Cal. 1884). Counts Two and Three charge that the appellees " . . . knowingly procured, induced, instigated and suborned . . ." the witnesses " . . . to knowingly commit perjury". Do not these words on their face charge such knowledge? Similar words have been held to satisfy the rule announced in Evans. Ryan v. United States, 58 F. 2d 708 (7th Cir. 1932). See also Stein v. United States, 337 F. 2d 14, 15 (9th Cir. 1964).

For purpose of illustration, consider several of the thirty-three specifications of perjury common to both Counts Two and Three, which will point up the sufficiency of the manner of pleading of all the specifications of perjury: Specification XI in Count Two [C. T. 125-126] and Specification IV in Count Three [C. T. 142-144].

Specification XI in Count Two sets forth the following testimony by witness-defendant Amsler:

"(Questions by the prosecutor; answers by Amsler)

"Q. When was the time that you spoke with Barry Keenan as to how you would answer any questions that law enforcement put to you?

"A. When was the time?

"Q. Yes.

"A. On, I believe it was, Thursday, Thursday evening.

"Q. This was after the money had been picked up?

"A. Yes, sir.

"Q. What did Barry tell you?

"A. We met with John up near John's house and we sat in this car that Barry had brought for John, and --

"Q. The station wagon?

"A. Yes, sir.

"Q. All right, sir.

"A. And we talked about what we should do when we were caught.

"Q. What was said?

"A. He said, 'Cooperate with the FBI, and do your best to show that it was a real crime, a legitimate crime.' Otherwise he would be in trouble and we would be in trouble. And we would get out of this if we followed the plan.

. . . . . .

"Q. Did you say you got together on this particular time that you are talking about so that you could make plans for John Irwin to get out of town and still arrange to get money to John Irwin's wife?

"A. John said that he was going down south to visit his brother first, and he wanted to know if he was going to send money to his wife, how he could, yes, sir.

"Q. And you discussed that, didn't you?

"A. Yes, sir.

"Q. But you also discussed this area, that Barry said, 'If you get arrested tell a convincing story to make the FBI think that it was a real crime'; is that correct?

"A. All except that, he said we were going to be arrested.

"Q. Barry told you that you were going to be arrested?

"A. Yes, sir.

"Q. And that's the orders that you were following, the instructions, or request, that you were following when you were being interviewed by the FBI; is that correct?

"A. That's correct.

(Reporter's Transcript in Case No. 33087-CD; p. 3417, line 20 to p. 3418, line 15; p. 3420, line 11 to p. 3421, line 5)" [C. T. 125-126].

The closing paragraph then pleads with specificity precisely what portion of the testimony was false, followed by a general allegation as to materiality, i.e.:

"And said testimony was false and contrary to the oath taken by Joseph Clyde Amsler, as Amsler, defendant FORDE and defendant ROOT

then and there well knew and believed in that: At said time and place, Thursday, December 12, 1963, in Los Angeles, California there was no conversation about what to do when Amsler, Barry W. Keenan, and John W. Irwin were caught; nor was there any conversation or instructions to 'Cooperate with the FBI, and do your best to show that it was a real crime, a legitimate crime. Otherwise he (Keenan) would be in trouble and we (Amsler and Irwin) would be in trouble. And we (Keenan, Amsler and Irwin) would get out of this if we followed the plan'; nor did Keenan tell Amsler that when Amsler gets arrested that Amsler was to 'tell a convincing story to make the FBI think it was a real crime.' and said testimony was material to the issues of guilt or innocence as framed by the indictment and pleas of not guilty entered by all of the defendants in Case No. 33087-CD." [C. T. 126].

Specification IV in Count Three sets forth the following testimony by witness defendant Irwin:

"(Questions by defendant ROOT, answers by Irwin.)

"Q. Now, did you have a discussion with Barry about whether or not you were going to continue or not in this so-called plan?

"A. Yes, ma'am.

"Q. At that time?

"A. Yes, ma'am.

"Q. Now, what did you say and what did he say?

"A. Well, I told him that it sounded scatter-brained to me, and that did he realize how big an operation this was, what could happen, and he said, 'Yes', he did realize it. And I -- in order to point out how difficult it was, I told him a town like Phoenix would be impossible for anybody to do such a thing as this. In the first place, it was an easy town to seal off. In the second place, when they had hooked up the phone, I realized there was no long distance direct dialing, and that was one of the fundamental things in this plan. At that time he suggested that we take Frank and get him into California, and I pointed out that he couldn't possibly do that because of the agricultural stations. And actually, it was right there that he gave up the whole plan.

"Q. Did he at that time say anything to you about whether or not the principals, such as Frank, Jr., would be cooperative with you?

"A. Yes, ma'am. He said --

"Q. What did he say?

"A. He said there was nothing to worry about as far as Frank was concerned, that Frank

knew that this was to take place, and there was nothing to worry about on that score. And I said -- then that's when I brought up these other fallacies in this scheme, and whoever the man was -- I told him whoever this person is or these persons are that are directing you in a scheme like this, have they ever seen Phoenix? Do they have any idea of the complications?

. . . . . .

"THE WITNESS: He told me at that time that he couldn't understand why he hadn't thought of that himself. But he said then that it just couldn't work; it was impossible.

"Q. Did he say anything to you as to why this plan had been presented to him?

"A. No, I don't think so.

"Q. Was there anything further said about the Arizona matter?

"A. Not at that time.

(Reporter's Transcript in Case No. 33087-CD, p. 3520, line 20, through p. 3522, line 3; p. 3522, lines 9 through 17)

"(Questions by the prosecutor; answers by Irwin.)

"Q. I think you just stated when you were coming back from Phoenix as far as you were concerned

the whole deal was off; correct?

"A. Yes, sir.

"Q. And my question to you is: At that time what was your understanding as to what the deal was? You know, what was called off. I don't care if you used the word 'deal' or not.

. . . . . .

"Q. Can you be more specific, Mr. Irwin?

"A. About what my position was?

"Q. What was the thing that you were not going to have any part of at that time, as you understood it? Was it to be a phony kidnapping?

"A. It was to be a phony kidnapping in every respect. Yes sir."

(Reporter's Transcript in Case No. 33087-CD; p. 3740, line 24 to p. 3741, line 6; p. 3742, line 2 to p. 3743, line 8) [C. T. 142-143].

The closing paragraph then pleads with specificity precisely what portion of the testimony was false, followed by a general allegation as to materiality, i.e.:

"And said testimony was false and contrary to the oath taken by John William Irwin as Irwin, defendant ROOT and defendant FORDE then and there well knew and believed in that: At said time

and place, the end of October 1963, at Phoenix, Arizona, there was no conversation about 'the principals, such as Frank [Sinatra], Jr.' being cooperative with Irwin and Barry W. Keenan; nor did Keenan say to Irwin that 'there was nothing to worry about as far as Frank [Sinatra, Jr.] was concerned, that Frank [Sinatra, Jr.] knew that this was to take place, and there was nothing to worry about on that score'; nor was there any conversation about a person or persons directing Keenan 'in a scheme like this'; nor was the 'deal' to be a 'phony kidnapping in every respect.' And the above said testimony was material to the issues of guilt or innocence as framed by the indictment and the pleas of not guilty . . . in case No. 33087-CD." [C. T. 144].

In addition to alleging the essential elements of the crime, the subornation counts plead, by incorporation by reference to Count One, the salient facts concerning the underlying Sinatra kidnapping case and the relationship of these appellees to Amsler and Irwin in those proceedings [C. T. 55-56, 61, 131]. What more can these appellees expect to advise them of the nature of the charge they would have to meet? Is the Government expected to encumber this indictment with evidentiary detail which might be reached by a bill of particulars? United States v. Polakoff, 112 F.2d 888, 890 (2nd Cir. 1940) cert. den. 311 U.S. 653 (1940).

Counts Two and Three, when compared with the subornation of perjury indictment sustained in Austin v. United States, 19 F.2d 127, 128 (9th Cir. 1927) is, at least, as sufficiently pleaded. See also Segal v. United States, 246 F.2d 814, 816 (8th Cir. 1957); Stein v. United States, 337 F.2d 14, 15 (9th Cir. 1964); United States v. Simplot, 192 F. Supp. 734 (D.C. Utah 1961), supra, p. 24; United States v. Debrow, 346 U.S. 374, supra, p. 12.

D. COUNTS FOUR AND FIVE ARE SUFFICIENT TO CHARGE OBSTRUCTION OF JUSTICE.

Count Four charges appellees with obstructing justice by corruptly endeavoring to influence, intimidate and impede Amsler by inducing him to testify falsely. After pleading by incorporation by reference, the salient facts concerning the Sinatra kidnapping case, the indictment alleges:

> "Beginning on or about December 14, 1963, and continuing to on or about March 7, 1964, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants GLADYS TOWLES ROOT and GEORGE A. FORDE unlawfully, willfully, and knowingly, did corruptly endeavor to influence, intimidate, and impede a witness, Joseph Clyde Amsler, in Case 33087-CD by inducing, commanding, requesting and having the said Joseph Clyde Amsler knowingly

testify falsely and contrary to his oath as a witness"
on the six material subjects, which are also specified in the conspiracy count [C. T. 199; 57-58].

Count Five is identical with Count Four except that the witness is Irwin. We will, therefore, deal with these counts together.

These counts would be legally sufficient even though the corrupt endeavor had been unsuccessful and Amsler and Irwin had testified truthfully. Roberts v. United States, 239 F. 2d 467, 470 (9th Cir. 1956); Catrino v. United States, 176 F. 2d 884, 886-887 (9th Cir. 1949). Thus, it is apparent that the appellees misconceive these counts just as they did the conspiracy count. The main thrust of their attack as to both counts is that the false testimony is not set forth, except by subject matter [C. T. 213; R. T. Vol. III, pp. 42, 48, 83]. The same misconception follows in appellee Root's argument that these counts are defective for failure to plead the facts supporting the allegation that the six subject areas were material [R. T. Vol. III, pp. 48-49].

The Court below was led into confusing the requirements of the obstruction of justice counts with concerns of the subornation of perjury counts. At the time of the hearing of the motions to dismiss the first indictment (which contained no subornation of counts) the District Court said (as to whether the obstruction of justice counts stated an offense in that indictment):

> ". . . and in my view neither Count 2 nor Count 3 do, and they will not and they cannot unless they set forth the alleged perjured . . . testimony

in haec verba and allege that it was material to the charge that was then pending." [R. T. Vol. II, pp. 73-74] [emphasis added]; supra, p. 6, footnote 6.

Supposing that Amsler and Irwin had frustrated the corrupt endeavor by testifying truthfully, the offense of obstructing justice would have taken place (Roberts v. United States, 239 F.2d 467, 470 (9th Cir. 1956), supra), yet how could the pleading requirements stated by the District Court ever be satisfied? As to the present indictment, the Court below was not as illuminating in dealing with these counts. As we read the opinion the District Court generally adopted those grounds advanced by appellees relating to sufficiency [12/] and did not deal specifically with the obstruction of justice counts on their separate merits. Perhaps of more significance is what was singled out for comment in the opinion. The District Court said:

> ". . . it is apparent that the gravamen of the offenses charged is that the defendants induced Amsler and Irwin to testify falsely concerning matters . . . described only by subject matter in Counts I, IV and V, which false testimony may, or may not, be found scattered somewhere among the 745 questions and

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12/ The District Court said: "It would serve no useful purpose to indulge in a prolonged dissertation of my views. It is sufficient to say that the motions are granted on the grounds and for the reasons . . . cited by . . . defense counsel . . . in their supporting briefs. . . . [C. T. 288].

answers . . . in Counts II and III, or somewhere else in the 4500 pages of the transcript of the evidence . . . ." [C. T. 287] See pp. 16, 17, supra, concerning the same observation as to the conspiracy count.

Suppose that only one subject area had been pleaded in Counts One, Four and Five, i.e., that the kidnapping was a publicity stunt and a hoax, and suppose only one specification of perjury were alleged, i.e., illustrative specification XI in Count Two and Specification IV in Count Three (See pp. 25-31, supra), would such an indictment be insufficient because it did not plead other subject areas and other false testimony (as to which proof might be lacking) which might lurk in the trial transcript? Segal v. United States, 246 F.2d 814, 816 (8th Cir. 1957), supra. Obviously this would be an erroneous test of sufficiency. On the other hand, if, instead of thirty-three specifications of perjury, there were twice that number, should the number of pages required to plead the perjury be the test of sufficiency?

Appellee Root contends that the present indictment is "verbose and lengthy" and that she " . . . cannot conceive of an indictment of 148 pages being denominated as a "plain, simple statement of the charges" [R. T. Vol. III, p. 52] and the District Court in its opinion appears to have emphasized the length of the subornation of perjury counts [C. T. 287]. This attack on the whole indictment, although a kind of "red herring", should be dealt with. First of all when appellee Root complains that in the first indictment

the Government "said too little and in this one they said too much" [R. T. Vol. III, pp. 32-33], she overlooks the fact that the complaint of "verboseness" is obviously inappropriate as to the conspiracy and obstruction of justice counts, and also that the first indictment contained no subornation of perjury counts (See Exhibit A). Secondly, the subornation counts are comprised of thirty-three distinct specifications of perjury [Appendices B and C]. Appellees complain that the indictment is too long, yet they would require the Government to plead the perjury in haec verba and recite factual details showing materiality not only for the subornation counts but the others as well. One can but speculate as to what would be the length of such a pleading. They can't have it both ways. An indictment is not required to satisfy every objection which human ingenuity may devise. United States v. Straitiff, 14 F. R. D. 337 (D. C. Pa. 1953). As pointed out earlier in this brief, sufficiency must be tested by practical considerations and any unnecessary allegations, if there be such, may be dealt with as surplusage. See pp. 11, 13, supra.

The allegations in these obstruction counts clearly satisfy the requirements of the following cases:

Anderson v. United States, 215 F. 2d 84, 85-89 (6th Cir. 1954) [13/];

13/ The indictment which was the focal point of the appeal in that case charged: "That on or about the 18th of February, 1953, at Louisville, in the Western District of Kentucky, Roy E. Anderson and John R. Lewis, Jr., did corruptly endeavor to impede the due administration of justice; that is to say, on or about the date aforementioned, the said Roy E. Anderson and John R. Lewis,
(continued)

United States v. Solow, 138 F. Supp. 812, 816 (D. C. S. D. N. Y. 1956);

Parsons v. United States, 189 F. 2d 252, 253 (5th Cir. 1951);

Hicks v. United States, 173 F. 2d 570 (4th Cir. 1949);

Nye v. United States, 137 F. 2d 73, 75-76 (4th Cir. 1943), cert. den., 320 U. S. 755 (1943);

Seawright v. United States, 224 F. 2d 482 (6th Cir. 1955), cert. den., 350 U. S. 838 (1955).

Roberts v. United States, 239 F. 2d 467 (9th Cir. 1956), supra, p. 34. See also Cole v. United States, 329 F. 2d 437, 438 (9th Cir. 1964), cert. den. 377 U. S. 954 (1964); Stein v. United States, 337 F. 2d 14, 15-16 (9th Cir. 1964).

The present indictment under the decisions and for the reasons herein discussed is legally sufficient.

13/ (continued): Jr., at Louisville, Kentucky, did agree and promise to W. Stewart Carter that they would alter the testimony of Roy E. Anderson and the testimony of Clifford W. Powers, the said Roy E. Anderson and Clifford W. Powers then being material witnesses in a case then pending in the United States District Court for the Western District of Kentucky against the said W. Stewart Carter, same being indictment No. 23,589, and did by this means corruptly endeavor to impede the due administration of justice."

CONCLUSION

It is, therefore, respectfully submitted that the judgment of the District Court should be reversed.

Respectfully submitted,

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JOHN K. VAN DE KAMP,
Assistant U. S. Attorney,
Chief, Criminal Division,
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Chief Trial Attorney,

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United States of America.

CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Donald A. Fareed
DONALD A. FAREED

APPENDIX "A"

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

February, 1964 Grand Jury

UNITED STATES OF AMERICA, Plaintiff, v. GLADYS TOWLES ROOT, GEORGE A. FORDE, Defendants.	)	NO. 33933 CD INDICTMENT [18 U.S.C. 371 - Conspiracy. 18 U.S.C. 1503 - Obstruction of Justice.]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. §371]

Beginning on or about December 14, 1963 and continuing to on or about March 7, 1964 defendants GLADYS TOWLES ROOT and GEORGE A. FORDE, and unindicted co-conspirators John William Irwin, Joseph Clyde Amsler, and Barry Worthington Keenan agreed, confederated and conspired to commit offenses against the United States, to wit:

1. To corruptly endeavor to influence, intimidate, and impede witnesses in the discharge of their duties as witnesses in the United States District Court for the Southern District of California in Case 33087-CD, in violation of 18 U.S.C. §1503;

2. To commit perjury in the United States District

Court for the Southern District of California in Case 33087-CD in violation of 18 U.S.C. §1621; and

3. To corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for the Southern District of California in Case 33087-CD, in violation of 18 U.S.C. §1503.

The primary object of said conspiracy was to obtain an acquittal by improper and unlawful means for the unindicted co-conspirators Irwin, Amsler, and Keenan, who were the defendants in Case 33087-CD in the United States District Court for the Southern District of California.

It was part of said conspiracy that witnesses would be instructed to testify falsely and contrary to the oath of a witness, in Case 33087-CD in the United States District Court for the Southern District of California.

It was further part of said conspiracy that unindicted co-conspirators Irwin and Amsler would commit perjury and testify falsely and contrary to the oath of a witness in Case 33087-CD in the United States District Court for the Southern District of California.

It was further part of said conspiracy to endeavor to influence, obstruct and impede the due administration of justice and prospective jurors, jurors, prospective witnesses, and witnesses prior to and during the trial in Case 33087-CD in the United States District Court for the Southern District of California, by

conveying and publishing both in the courtroom and outside of the courtroom, the false information that there was bona fide evidence that no crimes were committed because the alleged criminal acts were arranged as a publicity stunt and hoax by and on behalf of the alleged victim well knowing that there was no such evidence.

The defendants and the unindicted co-conspirators committed numerous overt acts in furtherance of said conspiracy and to effect the objects thereof, in the Central Division of the Southern District of California, including the following:

1. On or about December 18, 1963, defendant ROOT met with and conversed with unindicted co-conspirator Irwin.

2. On or about December 19, 1963, defendant FORDE telephoned William R. Woodfield.

3. On or about February 3, 1964, defendant FORDE accompanied by Clyde Duber met with and conversed with a prospective witness' parent.

4. On or about February 12, 1964, defendant ROOT had a conversation with Clyde Duber regarding a "Wes".

5. On or about February 14, 1964, defendant ROOT met with and conversed with defendant FORDE, Morris Lavine, and Clyde Duber about "Wes" and "Dawkins".

6. On or about February 15, 1964, defendant FORDE met with and conversed with unindicted co-conspirator Amsler.

7. On or about February 16, 1964, defendant FORDE and defendant ROOT met with and conversed with unindicted co-conspirators Amsler and Irwin.

8. On or about February 16, 1964, defendant FORDE and defendant ROOT met with and conversed with unindicted co-conspirators Irwin, Amsler and Keenan.

9. On or about February 16, 1964, defendant FORDE telephoned Charles Crouch.

10. On or about February 16, 1964, defendant FORDE telephoned Clyde Duber.

11. On or about February 16, 1964, defendant FORDE discussed "Wes" with a press representative.

12. On or about February 19, 1964, defendant ROOT conversed with Clyde Duber regarding "Dawkins", "Webb", and "Wes".

13. On or about February 19, 1964, defendant FORDE conversed with Clyde Duber regarding "Dawkins", "Webb", and "Wes".

14. On or about March 2, 1964, defendant FORDE called unindicted co-conspirator Amsler as a witness in Case 33087-CD, and unindicted co-conspirator Amsler took the witness stand, was sworn, and testified.

15. On or about March 2, 1964, defendant ROOT met with and conversed with unindicted co-conspirator Irwin regarding his testimony.

16. On or about March 3, 1964, unindicted co-conspirators Irwin, Amsler, and Keenan met and conversed with each other regarding Irwin and Amsler's testimony.

17. On or about March 4, 1964, defendant ROOT called

unindicted co-conspirator Irwin as a witness in Case 33087-CD and unindicted co-conspirator Irwin took the witness stand, was sworn, and testified.

18. On or about March 4, 1964, defendant FORDE conversed with unindicted co-conspirator Irwin regarding "Wes".

COUNT TWO

[18 U.S.C. §1503]

Beginning on or about December 14, 1963 and continuing to on or about March 7, 1964 in Los Angeles, California, within the Central Division of the Southern District of California, defendants GLADYS TOWLES ROOT and GEORGE A. FORDE unlawfully, willfully, and knowingly did corruptly endeavor to influence, intimidate, and impede Joseph Clyde Amsler, a witness in case 33087-CD then pending in the United States District Court for the Southern District of California, in the discharge of his duty as a witness by inducing, commanding, requesting, and having the said Joseph Clyde Amsler commit perjury and knowingly testify falsely and contrary to his oath as a witness.

COUNT THREE

[18 U.S.C. §1503]

Beginning on or about December 14, 1963 and continuing to on or about March 7, 1964 in Los Angeles, California, within the Central Division of the Southern District of California, defendants GLADYS TOWLES ROOT and GEORGE A. FORDE unlawfully, willfully, and knowingly did corruptly endeavor to influence, intimidate and impede John William Irwin, a witness in case 33087-CD then pending in the United States District Court for the Southern District of California, in the discharge of his duty as a witness by inducing, commanding, requesting, and having the said John William Irwin commit perjury and knowingly testify falsely and contrary to his oath as a witness.

A TRUE BILL

_____
Foreman

_____
FRANCIS C. WHELAN
United States Attorney

APPENDIX "B"

INDEX TO SPECIFICATIONS OF PERJURY BY AMSLER IN COUNT TWO

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